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September 27, 2005

BY HAND DELIVERY

Lawrence H. Norton, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5679

Dear Mr. Norton:

On behalf of the Bob Casey for Pennsylvania Committee and Vanessa DeSalvo Getz, as Treasurer (collectively, "the Committee"), this letter is submitted in response to the complaint filed by the Republican State Committee of Pennsylvania ("the Complaint") and subsequently labeled MUR 5679. The Complaint should be immediately dismissed.

A. Summary of the Complaint

The Complaint describes an advertising campaign undertaken by Scranton Times, L.P., to advertise *The Times-Tribune*. According to the Complaint, Scranton Times, L.P. paid for print and broadcast advertising that pictured a newspaper with the headline "Casey to run for Senate." The advertisement also included the words "*The Scranton Times*," "*The Tribune*," and the slogan "Better Together."

The Complaint alleged that "the advertisements constitute illegal corporate expenditures," because they do not fall under the press exemption of 11 C.F.R. §§ 100.73 and 100.132, and because they contain express advocacy. (Compl. 3.) The Complaint also alleges that "there is reason to believe that the Scranton Times-Tribune's advertising campaign constitutes an illegal corporate contribution to the Casey Campaign." (Compl. 3.) The Complaint bases this allegation solely upon the claim that William R. Lynett, a Publisher of *The Times-Tribune*, has made campaign contributions to Bob Casey and members of his family in the past.

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B. Legal Analysis

We note as a preliminary matter that because the communications in question were advertising for a newspaper and paid for by the newspaper's publisher, they may be covered by the scope of the press exemption. *See* 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.73, 132. If so, the communications could not be contributions or expenditures, and no in-kind contribution could result to the Committee. Even if the press exemption does not apply, however, these communications do not rise to the level of coordinated communications under Commission regulations.

A communication can only constitute an in-kind contribution to a candidate if it meets both the "content" prong and the "conduct" prong of 11 C.F.R. § 109.21. *See id.* § 109.21(a). It is clear, on the face of the Complaint, that the communications at issue do not meet the content standards of 11 C.F.R. § 109.21(c). Moreover, there was no conduct by the Committee that meets the conduct standards of 11 C.F.R. § 109.21(d), nor is there any specific allegation in the Complaint to the contrary. Because neither of the two requirements of the coordinated communication definition is met, the Complaint does not describe a violation of federal campaign law by the Committee.

1. Content

Even if the Complaint's allegations are taken as facts, the alleged communications do not meet the content standard of 11 C.F.R. § 109.21(c). Because they were not disseminated within 30 days of a primary election, or 60 days of a general election, the communications were not electioneering communications; section 109.21(c)(1) is not satisfied. The Complaint does not allege that the communications disseminated, distributed or republished Committee materials; section 109.21(c)(2) is not satisfied. The communication was not disseminated 120 days or fewer before an election or convention; section 109.21(c)(4) is not satisfied.

For the Commission to have reason to believe that the communications constituted in-kind contributions to the Committee, then, it would have to find that they "expressly advocate[d] the election or defeat of" Bob Casey. *Id.* § 109.21(c)(3). Such a finding would be nonsensical. The advertisements do not contain phrases or words that "can have no other reasonable meaning than to urge the election or defeat of" Bob Casey, *id.* § 100.22(a); nor can they "only be interpreted by a reasonable person as containing advocacy of the election or defeat of" Bob Casey, *id.* § 100.22(b). Indeed, the best reading of the advertisements is that they contain no position on Casey's candidacy at all. The Complaint suggests that the advertisements "visually promote[]" the idea that Casey

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and the office of United States Senator are better together." (Compl. 2.) In fact, the advertisements are for a newly-unified newspaper, and the advertisement's claim is that the two former newspapers are "Better Together." Even if the Complaint's interpretation were reasonable – which it is not – it is not the only reasonable interpretation. Therefore, these communications do not expressly advocate the election of Bob Casey.

Because the communications at issue are not express advocacy, and because they do not meet any other test of the content prong, the advertisements were not coordinated communications under the meaning of 11 C.F.R. § 109.21. Thus, they cannot be considered in-kind contributions to the Committee.

2. Conduct

Even if the Scranton Times, L.P. communications did meet the content prong of 11 C.F.R. § 109.21(c), the conduct prong of section 109.21(d) has not been satisfied. The Committee could not have violated federal election law if it did not request or suggest the communication, *see id.* § 109.21(d)(1); if it had no "material involvement" in the communication, *id.* § 109.21(d)(2); and if it had no "substantial discussion" regarding the communication, *id.* § 109.21(d)(3).¹

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. *See* 11 C.F.R. §§ 111.4(a), (d) (2004). "Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true." Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2000) (citations omitted).

The Complaint's allegation that the advertisements are coordinated communications rests only on Mr. Lynett's prior campaign contributions. No activity by the Committee under section 109.21(d) is alleged. Indeed, no actual activity by the Committee is alleged at all; the Complaint only describes actions taken by Scranton Times, L.P.

¹ While there are other conduct standards in section 109.21(d), they do not apply here. The "common vendor" and "former employee or independent contractor" standards cannot alone result in liability on the part of the Committee. *See id.* § 109.21(b)(2).

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The Complaint does not contain a "recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. § 111.4(d)(4). It contains only a bare allegation, unsupported by any facts, that the Committee had anything to do with the advertisements at issue. Under section 111.5(b), this Complaint should not have been accepted by the Office of General Counsel. The Commission cannot find reason to believe based on this "mere speculation," Statement of Reasons, MUR 4960, and it should immediately dismiss this Complaint with regard to the Committee.

C. Conclusion

The advertisements by Scranton Times, L.P. do not meet the content standards for a coordinated communication; and the Complaint does not contain anything but mere speculation that any activities by the Committee meet the conduct standards for a coordinated communication. There is therefore no reason to believe that these advertisements were in-kind contributions to the Committee. The Committee respectfully requests that the Commission dismiss the complaint.

Very truly yours,



Marc E. Elias
Counsel to the Committee

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